SUPREME COURT, U. S.

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IN THE

# Supreme Court of the United States

October Term, 1974

No. 74-7051

LEO B. HOSCHLER, The Registrar of Contractors of the California State Contractors' License Board,

*Petitioner,*

*vs.*

RAY GRIMES,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

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## PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

Petitioner, Leo B. Hoschler, the Registrar of Contractors of the Contractors' State License Board respectfully prays that a writ of certiorari issue to review the judgment and opinion of the California Supreme Court entered in this proceeding on August 9, 1974.

### Opinion Below

The opinion of the California Supreme Court, reported in 12 Cal. 3d 305, 115 Cal. Rptr. 625 (1974) appears in Appendix A hereto. The California Supreme Court's denial of petitioner's Petition for Rehearing on September 19, 1974 is reported in 12 Cal. 3d, Minutes, page 4 and appears in Appendix B hereto.

## Jurisdiction

The opinion and judgment of the California Supreme Court was filed on August 9, 1974. The California Supreme Court, the highest state court in California, denied petitioner's Petition for Rehearing on September 19, 1974. This petition is filed within 90 days of that date. Jurisdiction is conferred on this court by 28 U.S. Code Section 1257(3).

## Question Presented

Whether the application of an otherwise valid California statute, which permits the registrar of the California State Contractors' License Board to give notice, hold a hearing and suspend, revoke or otherwise discipline the license of a contractor who has avoided lawful obligations arising out of his business as a contractor by means of an adjudication in bankruptcy unconstitutionally conflicts with the purposes embodied in the Federal Bankruptcy Act.

## Statutes Involved

1. United States Constitution, Article VI, clause 2:
   "This Constitution, and the laws of the United States which shall be made in pursuance thereof; . . . . shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

2. 11 U.S.C., Section 35:
   "(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, . . ."

3. California Business and Professions Code Section 7113.5:

> "The avoidance or settlement by a licensee for less than the full amount of the lawful obligations of such licensee incurred as a contractor, . . . by (a) adjudication in bankruptcy, . . . constitutes a cause for disciplinary action."
>
> ". . ."[1]

**Statement of the Case**

On February 26, 1971, petitioner filed an accusation against respondent alleging cause for discipline of respondent's contractor's license in that respondent had avoided by adjudication in bankruptcy, approximately $25,119.32 of his obligations accumulated as a result of labor, supplies and materials furnished to him for use in his activities as a licensed contractor. After an administrative hearing petitioner issued a decision revoking respondent's contractor's license effective December 31, 1972.

Respondent appealed the decision of the Registrar of Contractors to the Los Angeles Superior Court relying

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[1]California Business and Professions Code § 7113.5 provides as follows:

> "The avoidance or settlement by a licensee for less than their full amount of the lawful obligations of such licensee incurred as a contractor, whether by (a) adjudication in bankruptcy, (b) composition, arrangement, or reorganization with creditors under federal or state law, (c) composition, arrangement, or reorganization with creditors under any agreement or understanding, (d) receivership as provided in Chapter 5 (commencing at Section 564) of Title 7 of Part 2 of the Code of Civil Procedure, (e) the making of an assignment for the benefit of creditors as provided in Title 3 (commencing at Section 3449) of Part 2

(This footnote is continued on next page)

on the case of *Perez v. Campbell*, 402 U.S. 637 (1971). Respondent argued that the suspension or revocation of his license for discharging lawful obligations arising out of his business as a licensed contractor in California by adjudication in bankruptcy unconstitutionally blocked the purposes and objectives of the Federal Bankruptcy Act. On April 7, 1972 the Los Angeles Superior Court held that the *Perez v. Campbell* case was controlling and granted judgment for respondent.

Petitioner appealed to the California Court of Appeal, Second Appellate District, Division Three and by a decision filed May 23, 1973, that court affirmed the trial court on the basis that *Perez v. Campbell* was controlling. A copy of the decision appears in Appendix C hereto.

Petitioner petitioned the California Supreme Court for a hearing which petition was granted thereby nullifying the Court of Appeal's decision. On August 9, 1974, the California Supreme Court, by a four to three vote, affirmed the trial court's decision. The majority determined that the *Perez* case was controlling.

On September 19, 1974, petitioner's petition for rehearing was denied by the California Supreme Court, the highest state court in California.

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of Division 4 of the Civil Code, (f) common law assignment for the benefit of creditors, (g) trusteeship, or (h) dissolution constitutes a cause for disciplinary action.

"This section shall not apply to an individual settlement of the obligation of a licensee by such licensee with a creditor which is not a part of or in connection with a settlement with other creditors of such licensee."

## REASON FOR GRANTING A WRIT OF CERTIORARI

### The Decision of the California Supreme Court Improperly Applies and Extends the Decision of This Court in Perez v. Campbell

As a result of an improper reliance on and extension of this court's decision in *Perez v. Campbell*, 402 U.S. 637 (1971), the California Supreme Court has held invalid a state statute on the ground that it unconstitutionally conflicts with the purposes of the bankruptcy laws of the United States. In the *Perez* case, *supra*, this court in a five to four decision held unconstitutional an Arizona statute which stated that a discharge in bankruptcy of a driver's judgment debt arising out of an automobile accident did not operate as a bar to the suspension of the driver's license for failure to satisfy that judgment debt. The Arizona statute differs fundamentally and constitutionally from the California statute in question.

Assuming that the majority decision of this court in *Perez* was a proper application of the supremacy clause to the Arizona statute before it, petitioner contends that the California Supreme Court's application of the *Perez* holding to the statute in question is an improper extension of this court's decision which results in the invalidation of an otherwise valid statute designed to protect the residents of California from dishonest, incompetent or financially irresponsible contractors. If the California Supreme Court's interpretation of the *Perez* decision is permitted to stand, there will no longer be a deterrent to or sanction against a contractor who avoids obligation after obligation thereby causing substantial injury to subcontractors, employees, material suppliers and homeowners even though the obligations

were incurred as a result of dishonesty, incompetency or financial irresponsibility in the very field which California is attempting to regulate.

In *Perez*, the majority of this court held unconstitutional an Arizona statute which provided that "[a] discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any other requirements of this article." (402 U.S. at pp. 642 and 656.) This court characterized the Arizona statute as one whose sole emphasis was to provide ". . . leverage for the collection of damages." (402 U.S. at p. 646.) Relying on this court's decision in *Perez*, the California Supreme Court has held invalid a state statute which merely gives the Registrar of Contractors the authority to hold a hearing and, if warranted, discipline a contractor who has avoided lawful obligations arising out of his contracting activities by bankruptcy. As the three-member dissent of the California Supreme Court pointed out:

> "I do not believe the majority's reliance on Perez v. Campbell, 402 U.S. 637, is justified, for section 7113.5, which we upheld in Tracy v. Contractors' State License Board, *supra*, 63 Cal. 2d 598, presents a different question than was decided by the high court in *Perez*. In *Perez* the court was faced with a statute which provided for the suspension of driving privileges following an accident unless the resulting judgment was paid in full, regardless of its prior discharge in bankruptcy. The court stated that: 'The sole emphasis in the [Arizona] Act is one of providing leverage

for the collection of damages . . . .' (402 U.S. at p. 646.) This purpose was held to conflict with the federal Bankruptcy Act which was designed to give the debtor a fresh start.

"On the other hand section 7113.5 is merely a codification of a proper state policy to protect the public from incompetence and deception by authorizing state officers to revoke or suspend a bankrupt contractor's license. The imposition of such discipline does not promote any debt-collection policy in conflict with the bankruptcy laws." (See Appendix A, Dissenting Opinion, p. 12.)

A simple comparison of Business and Professions Code Section 7113.5 with the Arizona statute held unconstitutional by this court in *Perez* discloses an obvious and fundamental difference, one which may make the Arizona statute unconstitutional but certainly does not render Business and Professions Code Section 7113.5 unconstitutional. The Arizona statute held unconstitutional by this court (Ariz. Rev. Stat., § 28-1163(B)) specifically stated that "discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article." (402 U.S. at p. 642.) The requirement of the article was satisfaction of a judgment debt. (Ariz. Rev. Stat., § 28-1163(A)). (*Ibid.*) In *Perez*, this court held unconstitutional the Arizona statute which provided that the driver had to pay the debt even though the debt was discharged in bankruptcy *not* the statute authorizing suspension of the driver's license for failure to pay the judgment debt. On the

other hand the California Supreme Court, relying on *Perez*, held a statute unconstitutional which authorized discipline for avoiding lawful obligations of a licensee incurred as a contractor by adjudication in bankruptcy. This statute unlike the Arizona statute does not provide that the discharged debts must be satisfied. However as the three-member dissent of the California Supreme Court stated:

> "Evidently, the majority assume that any law which discourages a debtor from taking the extreme measure of bankruptcy would be invalid! To the contrary, in view of the likely hardship to creditors and the public, and the damage to his own reputation, the debtor quite properly should be inhibited in this regard. Of course, once the debtor does elect to file for bankruptcy, the state may not interfere with the policy underlying the bankruptcy laws to effect a permanent discharge of business debts. *Yet, section 7113.5, in authorizing the board to take disciplinary action against a bankrupt contractor, has no effect whatever upon the discharge or collection of the contractor's debts.*
>
> "Thus, I would conclude that statutory authority to revoke a bankrupt contractor's license for the protection of the public does not conflict with the purposes of the Federal Bankruptcy Act to relieve a debtor from payment of his past obligations." (Emphasis added.) (See Appendix A, Dissenting Opinion, p. 13.)

Petitioner respectfully submits that in its improper application of this court's decision in *Perez*, the California Supreme Court was compelled to examine a sec-

tion of California law that was not properly before it to determine that Section 7113.5 unconstitutionally conflicted with the Federal Bankruptcy Act. California Business and Professions Code Section 7102[2] sets forth the procedure a revoked licensee must employ should he seek to reinstate his license one year after the original order of revocation. The procedure set forth in Section 7102 is separate and apart from the disciplinary procedure set forth in Section 7113.5 and was not before the California Supreme Court at the time it rendered its decision holding Section 7113.5 unconstitutional. Section 7102 provides in part that when a license is revoked all loss caused by the acts or omissions for which the license was revoked must be fully satisfied in order to reinstate the license. Granted, this statute could be construed to be similar to the Arizona statute held unconstitutional by this court in *Perez*. Unfortunately, it was not properly before the California court and it was not this statute the California court held unconstitutional. The California Supreme Court felt constrained by the *Perez* decision to hold Section 7113.5 unconstitutional apparently because Section 7102 ap-

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[2]California Business and Professions Code § 7102 provides as follows:

> "Reinstatement or reissuance of license. After suspension of the license upon any of the grounds set forth in this article, the registrar may reinstate the license upon proof of compliance by the contractor with all provisions of the decision as to reinstatement or, in the absence of such decision or any provisions therein as to reinstatement, in the sound discretion of the registrar.
>
> "After revocation of a license upon any of the grounds set forth in this article, the license shall not be reinstated or reissued within a period of one year after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with."

peared to frustrate the purposes of the Federal Bankruptcy Act. The dissent of the California Supreme Court correctly noted the majority's misplaced reliance on *Perez* by stating:

> "Wholly apart from the propriety of license revocation, however, is the question whether a contractor such as Grimes must pay his previously discharged debts as a condition to reinstatement of his contractor's license. Section 7102 of the Business and Professions Code sets forth the conditions for obtaining reinstatement or reissuance of a license previously revoked by the board, including the provision that such reinstatement or reissuance shall not occur for a period of one year following revocation, 'and then only on proper showing that *all loss caused by the act or omission for which the license was revoked has been fully satisfied* and that all conditions imposed by the decision of revocation have been complied with.' (Italics added.) Grimes forcefully contends that section 7102 would conflict with the bankruptcy laws (and the rationale of the *Perez* decision) were it interpreted as requiring Grimes to repay his discharged debts as a condition to reinstatement of his license. (Citation omitted.)
>
> "Yet the validity and interpretation of section 7102 is not yet before us in this case, for Grimes only attacks the initial revocation of his license and not the board's failure to reinstate. (Citation omitted.) If, contrary to the board's representations to this court, (fn. omitted) the board attempts to impose such a condition then the question of the validity of section 7102, as so applied, will be ripe for our consideration." (See Appendix A, Dissenting Opinion, pp. 13-14.)

## Conclusion

The California Supreme Court has held invalid an otherwise valid state statute as being repugnant to the laws of the United States by improperly expanding and construing this court's applicable decision in *Perez v. Campbell*, 402 U.S. 637.

A state statute which allows regulation and discipline of a licensed contractor who avoids lawful obligations arising out of his business by an adjudication in bankruptcy and which does not provide that the avoided obligations must be repaid before the license can be reinstated does not unconstitutionally conflict with the purposes of the Federal Bankruptcy Act.

A Writ of Certiorari should issue to review the Judgment and Opinion of the California Supreme Court.

Respectfully submitted,

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## APPENDIX A.

**Opinion of the Supreme Court of the State of California.**

In the Supreme Court of the State of California, in bank.

Ray Grimes, Plaintiff and Respondent, v. Leo B. Hoschler, as Registrar, etc., et al., Defendants and Appellants. L.A. 30173, Super. Ct. C-19441.

Defendants Leo B. Hoschler, the Registrar of Contractors (registrar), the Contractors' State License Board (board),[1] and the members of the board appeal from a judgment entered in a proceeding in administrative mandamus ordering issuance of a peremptory writ of mandate commanding defendants to set aside their decision revoking the contractor's license of plaintiff Ray Grimes and to reinstate plaintiff's license.

The registrar of contractors filed an accusation (§ 7091; Gov. Code, § 11500 et seq.) against Grimes asserting as the sole ground for discipline that the latter had violated section 7113.5[2] in that by obtaining an adjudication in bankruptcy he had avoided lawful obligations incurred by him as a contractor. A hearing officer found the accusation to be true and proposed that plaintiff's license be revoked. The registrar adopted the proposed decision of the hearing officer.

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[1]See Business and Professions Code sections 7000.5 and 7011. Hereafter, unless otherwise indicated, all section references are to the Business and Professions Code.

[2]Section 7113.5 provides in part: "The avoidance or settlement by a licensee for less than their full amount of the lawful obligations of such licensee incurred as a contractor . . . by (a) adjudication in bankruptcy . . . constitutes a cause for disciplinary action."

Grimes sought review of that decision by administrative mandamus. (Code Civ. Proc., § 1094.5.)[3] He claimed that the provision in section 7113.5 establishing the basis for revocation of his license frustrates the purposes of the Bankruptcy Act under federal law and therefore is invalid under the supremacy clause of the federal Constitution. (U.S. Const., art. VI, § 2.) Relying on Perez v. Campbell (1971) 402 U.S. 637, the superior court entered judgment in favor of Grimes, ordering issuance of a peremptory writ of mandate directing defendants to set aside the decision and ordering reinstatement of Grimes' license. This appeal followed.

Defendants contend that the pertinent provision in section 7113.5 is not in conflict with that part of the Bankruptcy Act allowing a debtor to discharge certain debts in a bankruptcy proceeding. (11 U.S.C.A. § 35.) They argue that Perez v. Campbell, *supra*, 402 U.S. 637, is distinguishable from the present case and that our opinion in Tracy v. Contractors' State License Board (1965) 63 Cal.2d 598, 599, in which we sustained section 7113.5 against constitutional attack, is still controlling.[4]

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[3]The petition for a writ of mandamus did not specifically refer to Code of Civil Procedure section 1094.5; however, it indicated that Grimes was seeking to set aside the decision of the registrar. Inasmuch as the registrar in his adjudicatory function is required by law to conduct a hearing in which evidence is taken (§ 7091; Gov. Code, § 11500 et seq.), it is clear that the standards for administrative mandamus expressed in section 1094.5 of the Code of Civil Procedure apply to this proceeding. (See Cal. Administrative Mandamus (Cont. Ed. Bar) § 2.3, pp. 10-11; Cal. Civil Writs (Cont. Ed. Bar 1970) § 5.8, pp. 67-68.)

[4]Defendants also contend that section 7113.5 represents a valid exercise of the police power of this state. (See Tracy v.

In Perez v. Campbell, *supra,* 402 U.S. 637, 652, the United States Supreme Court struck down a state statute providing that a discharge in bankruptcy did not exonerate a judgment debtor from the requirements of a state law in respect to the financial responsibility of motorists. The state law involved there authorized the suspension of a driver's license and vehicle registration for nonpayment of a judgment debt attributable to an automobile accident. Under the provisions of the challenged statute, until the judgment was paid the suspension remained in effect and the judgment debtor continued under its restraint despite the fact that the debt might later be discharged in bankruptcy.

The *Perez* court carefully delineated the issue presented and explicated the principles for its resolution. The basic question, the high court explained, "is the power of a State to include as part of this comprehensive enactment designed to secure compensation for automobile accident victims a section providing that a discharge in bankruptcy of the automobile accident tort judgment shall have no effect on the judgment debtor's obligation to repay the judgment creditor, at least insofar as such repayment may be enforced by the withholding of driving privileges by the State." (*Id.,* at p. 643.) The appropriate test for determining the validity of such state power was described as follows: "Deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy

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Contractors' State License Board, *supra,* 63 Cal.2d 598, 599; Hope v. Contractors' etc. Bd. (1964) 228 Cal.App.2d 414, 420.) We have no doubt that this state has an interest in regulating the financial affairs of its licensed contractors. However, notwithstanding this state interest, such regulation may not operate to frustrate the achievement of objectives under federal law. (See Halpin v. Superior Court (1972) 6 Cal.3d 885, 900.)

Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict." (*Id.*, at p. 644.)

In applying this test, the *Perez* court examined the purposes of the two acts. Relying on the construction of the state statute by the Arizona courts, the high court concluded that the "sole emphasis in the [state] Act is one of providing leverage for the collection of damages from drivers who either admit that they are at fault or are adjudged negligent." (*Id.*, at pp. 646-647.) The court then examined the federal act: "This Court on numerous occasions has stated that '[o]ne of the primary purposes of the bankruptcy act' is to give debtors 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.' [Citations.]" (*Id.*, at p. 648.)

The Supreme Court concluded that the state statute could not stand because of the apparent conflict between state law and federal law. (*Id.*, at p. 652.) In reaching this conclusion the *Perez* opinion made clear that the controlling principle is whether a state statute interferes with and frustrates a federal statute and not merely whether the former is designed for some conceivable state purpose. In other words, the existence *vel non* of a conflict depends on the *effect* of the state statute and cannot be determined merely by a consideration of its *purpose*. Quoting from Hines v. Davidowitz (1941) 312 U.S. 52, 67, the Supreme Court declared that " '[i]n the final analysis,' our function is to determine whether a challenged state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " (Perez v. Campbell, *supra*, 402 U.S. at p. 649.)

The *Perez* court explained that a different principle was applied in two earlier decisions involving similar state statutes. (Kesler v. Department of Public Safety (1962) 369 U.S. 153 and Reitz v. Mealey (1941) 314 U.S. 33.) "[In *Kesler* the] statute, in short, frustrated Congress' policy of giving discharged debtors a new start. But the *Kesler* majority was not concerned by this frustration. In upholding the statute, the majority opinion did not look to the effect of the legislation. . . . [It considered only] the purpose of the state legislation and upheld it because the purpose was not to circumvent the Bankruptcy Act but to promote highway safety." (Perez v. Campbell, *supra*, 402 U.S. at p. 650; fn. omitted.) "The opinion of the Court in *Reitz* was similarly concerned, not with the fact that New York's financial responsibility law frustrated the operation of the Bankruptcy Act, but with the purpose of the law, which was divined as the promotion of highway safety." (*Id.*, at p. 651.)

Finally, *Perez* emphasized that the ruling of *Kesler* and *Reitz* was no longer valid. "We can no longer adhere to the aberrational doctrine of *Kesler* and *Reitz* that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration. Apart from the fact that it is at odds with the approach taken in nearly all our Supremacy Clause cases, such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply publishing a legislative committee report articulating some state interest or policy—other than frustration of the federal objective—that would be tangentially furthered by the proposed state law. In view of the consequences, we certainly would not apply the *Kesler* doctrine in all Supremacy Clause cases. Although it

is possible to argue that *Kesler* and *Reitz* are somehow confined to cases involving either bankruptcy or highway safety, analysis discloses no reason why the States should have broader power to nullify federal law in these fields than in others. Thus, we conclude that *Kesler* and *Reitz* can have no authoritative effect to the extent they are inconsistent with the controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause." (*Id.*, at pp. 651-652.)[5]

Our task in the case at bench, therefore, is to determine whether the challenged provision in section 7113.5 represents " 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " (Perez v. Campbell, *supra*, 402 U.S. at p. 649.) The purposes embodied in the Bankruptcy Act, as explained in *Perez* (402 U.S. at p. 648) are to give debtors a "new opportunity" and a "clear field for future effort" by eliminating preexisting debts.

We turn to consider the purpose and effect of the challenged state provision. In Tracy v. Contractors' State License Board, *supra*, 63 Cal.2d 598, 600, this court concluded that the provision is "not designed to

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[5]In part "III" of the opinion, the *Perez* majority explained that the state statute there was invalid even under the *Kesler-Reitz* analysis. Since the express purpose of the state statute was to protect judgment creditors from " 'financially irresponsible persons' " (*Perez* at p. 644), the court reasoned that such a purpose conflicted with a primary objective of the Bankruptcy Act—"to give debtors 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.' [Citations.]" (*Perez* at p. 648.) At the same time the court affirmed "that *Kesler* and *Reitz* are not in harmony with sound constitutional principle," and concluded that those cases "should not be extended to cover this new and distinguishable case" which has both the effect and purpose of frustrating the objectives of the Bankruptcy Act. (*Id.*, at p. 654.)

aid collection of debts but to protect the health, safety, and welfare of the public."[6] The purpose of the statute has also been declared to be "frankly economic," i.e., it reflects a "state concern for the economic ills of society." (Hope v. Contractors' etc. Bd., *supra,* 228 Cal.App.2d 414, 425.) It would not seem, at first blush, that a statute whose purpose is to protect the "health, safety, and welfare of the public," even though motivated by "frankly economic" reasons, would conflict with the purposes of the Bankruptcy Act. But we must probe further since we are commanded by *Perez* to consider not only the declared *purpose* of section 7113.5 but also its *effect.*

The effect of the section is unmistakably clear: a licensee is threatened with the loss of his license if his debts incurred as a contractor are discharged for less than their full amount in a bankruptcy proceeding. As a further consequence, the Contractors License Law forbids the reissuance of a revoked license until the amounts of the discharged debts are paid in full. (§ 7102.)[7] Hence, the statutory scheme in question frustrates the objectives of Congress in three respects:

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[6]*Tracy* also quotes from Howard v. State of California (1948) 85 Cal.App.2d 361, 365 stating that "[t]he purpose of the act [Contractors License Law] is to guard the public against the consequences of incompetent workmanship, imposition and deception." It is clear, however, that *Howard* was merely expressing the *general* purpose of the Contractors License Law (§ 7000 et seq.) because the statute under consideration there was another section of the Contractors License Law making it a misdemeanor for an unlicensed person to act in the capacity of a contractor. (§ 7028.)

[7]Section 7102 provides in part: "After revocation of a license upon any of the grounds set forth in this article, the license shall not be reinstated or reissued within a period of one year after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied. . . ."

first, it tends to discourage a licensed contractor from having his business debts discharged in bankruptcy; second, if he is adjudicated a bankrupt, either voluntarily or involuntarily, section 7113.5 empowers the board to revoke or suspend his license, thus depriving him of his means of livelihood; and third, section 7102, in effect, compels the disciplined licensee to pay his discharged business debts if he desires to have his license reissued or reinstated.[8] In sum, the relevant sections of the Contractors License Law here under examination not only discourage licensed contractors from voluntarily availing themselves of the beneficent provisions of the Bankruptcy Act but sternly deny a fresh start to all licensees who are adjudicated bankrupts either voluntarily or involuntarily.

The state statutes here challenged bear a striking similarity to the state financial responsibility laws under attack in *Perez*. There a driver's license was required to be suspended for failure to pay a judgment debt discharged in a bankruptcy proceeding; here a contractor's license is subject to being revoked or suspended for failure to pay the full amount of a business debt discharged in bankruptcy. Furthermore it is noteworthy that under each state statute, the respective license may not be reinstated or reissued unless the discharged debt has been paid in full. The conclusion is ineluctable that section 7113.5 is in conflict with the Bank-

[8]Respondents contend that this proceeding in administrative mandamus challenges the revocation of Grimes' license under section 7113.5 and does not directly concern the application of section 7102. However, inasmuch as section 7102 governs Grimes' right to reissuance of his license, it represents one of the consequences of revocation under section 7113.5. Therefore, we must consider, as in *Perez* (402 U.S. at pp. 639-642), the operative statutory scheme as a whole when it is claimed that a particular statute conflicts with the purposes of the Bankruptcy Act.

ruptcy Act and therefore must be declared invalid as violative of the supremacy clause.

Defendants, however, attempt to distinguish the statute in this case from the one in *Perez*. First, they argue that, unlike the state statute in *Perez*, section 7113.5 is not designed to promote the collection of debts discharged in bankruptcy. Apparently, defendants continue to look only to the *purpose* of the statute and not to its *effect*. As *Perez* pointed out, the crucial question is whether the state act frustrates the intent of Congress to give debtors a "new opportunity in life." (Perez v. Campbell, *supra*, 402 U.S. at p. 648.) Therefore, although a state statute is not expressly designed to promote the collection of debts, it may still offend the purpose of Congress if its effect is to deny to debtors the benefits of the bankruptcy act.

Additionally, defendants argue that unlike the state law in *Perez* which *required* the suspension of a license, section 7113.5 imposes less severe sanctions. (See Tracy v. Contractors' State License Board, *supra*, 63 Cal.2d at p. 601; Hope v. Contractors' etc. Bd., *supra*, 228 Cal. App.2d at p. 425.) They urge that under the section a discharge of debts in bankruptcy does not automatically result in loss of a contractor's license but merely gives cause for disciplinary action in an administrative proceeding wherein the contractor may be deemed worthy of retaining his license. The record in the instant case belies such a claim. The registrar, in his administrative hearing on the accusation, merely considered evidence that Grimes had been adjudicated a bankrupt and had discharged his debts incurred as a contractor for less than their full amount. The trial court found that his adjudication as a bankrupt was the sole cause for revocation of his license. In any event, defendants' argu-

ment is beside the point. Whether disciplinary action is automatic or discretionary, the objectives of the Bankruptcy Act are frustrated where, as here, a state statute permits the registrar to revoke the license of a contractor who has been adjudicated a bankrupt.

Finally, defendants contend that our decision herein is controlled by our earlier opinion in Tracy v. Contractors' State License Board, *supra*, 63 Cal.2d 598. In *Tracy*, this court, relying on Hope v. Contractors' etc. Bd., *supra*, 228 Cal.App.2d 414 and noting that *Hope* rested on *Kesler* which in turn rested on *Reitz*, concluded that section 7113.5 was not in conflict with the Bankruptcy Act because it was not intended to promote the collection of debts. However, as we have explained, subsequent to *Tracy*, the high court in *Perez* overruled both *Kesler* and *Reitz*, and thus knocked out the decisional underpinnings from *Hope* and *Tracy*. Moreover, it is clear that *Tracy* is inconsistent with *Perez;* the former considered only the purpose of the state statute and did not, as required by the latter decision, examine its effect. Tracy v. Contractors' State License Board, *supra*, 63 Cal.2d 598, is therefore overruled.

We hold that the challenged provision in section 7113.5 conflicts with the Bankruptcy Act and therefore is invalid under the supremacy clause of the United States Constitution.

The judgment is affirmed.

Sullivan, *J.*

We concur:

Wright, *C. J.*
Tobriner, *J.*
Mosk, *J.*

DISSENTING OPINION BY BURKE, J.

I dissent. The majority finds that Business and Professions Code section 7113.5 conflicts with the objectives of the federal Bankruptcy Act (11 U.S.C. § 1 et seq.) and is therefore invalid under the supremacy clause (U.S. Const., art. VI, § 2). My colleagues feel compelled in reaching this result to overrule our unanimous decision in Tracy v. Contractors' State License Board, 63 Cal.2d 598. I cannot concur in this holding because I believe section 7113.5 is supported by a sound public policy and was correctly characterized by this court in *Tracy* (p. 600) as "not designed to aid collection of debts but to protect the health, safety, and welfare of the public."

In *Tracy*, we specifically rejected the claim that section 7113.5 conflicted with the Bankruptcy Act. We noted that " 'The purpose of the act [Contractors' License Law] is to guard the public against the consequences of incompetent workmanship, imposition and deception.' [Citations.] Accordingly, the present statute . . . bears only tangentially on the purposes served by the Bankruptcy Act and does not conflict with it." (63 Cal.2d at p. 600; see also Hope v. Contractors' etc. Bd., 228 Cal.App.2d 414; Hopkins v. Contractors' State License Bd., 240 Cal.App.2d 710.)[1]

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[1]As appellants point out, the state has a legitimate interest in protecting subcontractors, materialmen, employees and property owners from loss resulting from the financial irresponsibility or incompetence of building contractors. Accordingly, the fact of bankruptcy properly triggers an investigation leading to possible license revocation, as does any failure to pay suppliers, materialmen or subcontractors (§ 7120) or failure to complete a construction job (§ 7113). Under such circumstances, revocation occurs to prevent similar loss in the future, and not to provide *past* creditors with any additional leverage or recourse against the contractor.

I do not believe the majority's reliance on Perez v. Campbell, 402 U.S. 637, is justified, for section 7113.5, which we upheld in Tracy v. Contractors' State License Board, *supra*, 63 Cal.2d 598, presents a different question than was decided by the high court in *Perez*. In *Perez* the court was faced with a statute which provided for the suspension of driving privileges following an accident unless the resulting judgment was paid in full, regardless of its prior discharge in bankruptcy. The court stated that: "The sole emphasis in the [Arizona] Act is one of providing leverage for the collection of damages. . . ." (402 U.S. at p. 646.) This purpose was held to conflict with the federal Bankruptcy Act which was designed to give the debtor a fresh start.

On the other hand section 7113.5 is merely a codification of a proper state policy to protect the public from incompetence and deception by authorizing state officers to revoke or suspend a bankrupt contractor's license. The imposition of such discipline does not promote any debt-collection policy in conflict with the bankruptcy laws. (See fn. 1, *ante*.)

We noted in Tracy v. Contractors' State License Board, *supra*, 63 Cal.2d 598, 601, that the sanctions imposed by section 7113.5 " 'are much less drastic than those of the Utah Financial Responsibility Act. Here acts of bankruptcy do not require peremptory license revocation. They merely give cause for the taking of some disciplinary action. Whether such action will be taken and, if so, the extent thereof, is left to be gauged by a comprehensive appraisal of all factors relevant to the ultimate issue: Can this person at the present time be deemed competent to continue to pursue a vocation substantially affecting the public weal?' "

(Quoting from Hope v. Contractors' etc. Bd., *supra,* 228 Cal.App.2d 414, 425.)

The majority suggest that section 7113.5 is invalid because "it tends to discourage a licensed contractor from having his business debts discharged in bankruptcy. . . ." (P. 11.) Evidently, the majority assume that any law which discourages a debtor from taking the extreme measure of bankruptcy would be invalid! To the contrary, in view of the likely hardship to creditors and the public, and the damage to his own reputation, the debtor quite properly should be inhibited in this regard. Of course, once the debtor does elect to file for bankruptcy, the state may not interfere with the policy underlying the bankruptcy laws to effect a permanent discharge of business debts. Yet, section 7113.5, in authorizing the board to take disciplinary action against a bankrupt contractor, has no effect whatever upon the discharge or collection of the contractor's debts.

Thus, I would conclude that statutory authority to revoke a bankrupt contractor's license for the protection of the public does not conflict with the purpose of the federal Bankruptcy Act to relieve a debtor from payment of his past obligations.

Wholly apart from the propriety of license revocation, however, is the question whether a contractor such as Grimes must pay his previously discharged debts as a condition to reinstatement of his contractor's license. Section 7102 of the Business and Professions Code sets forth the conditions for obtaining reinstatement or reissuance of a license previously revoked by the board, including the provision that such reinstatement or reissuance shall not occur for a period of one year following revocation, "and then only on proper showing that

*all loss caused by the act or omission for which the license was revoked has been fully satisfied* and that all conditions imposed by the decision of revocation have been complied with." (Italics added.) Grimes forcefully contends that section 7102 would conflict with the bankruptcy laws (and the rationale of the *Perez* decision) were it interpreted as requiring Grimes to repay his discharged debts as a condition to reinstatement of his license. (See also Note, 15 Hast.L.J. 348.)

Yet the validity and interpretation of section 7102 is not yet before us in this case, for Grimes only attacks the initial revocation of his license and not the board's failure to reinstate it. (See Hope v. Contractors' etc. Bd., *supra,* 228 Cal.App.2d 414, 426.) If, contrary to the board's representations to this court,[2] the board attempts to impose such a condition then the question of the validity of section 7102, as so applied, will be ripe for our consideration.

I would reverse the judgment.

Burke, *J.*

We concur:

McComb, *J.*

Clark, *J.*

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[2]Appellants have disclaimed any intention to apply the provisions of section 7102 to cases wherein a license has been revoked under section 7113.5. Appellants further state that "The Registrar [of Contractors], in protecting the public, is concerned with whether or not the licensee has rehabilitated himself and is likely to practice his chosen profession competently and responsibly so as not to represent a threat to the laborers, materialmen, and homeowners with whom he will come into contact as a contractor."

## APPENDIX B.

### Order Denying Rehearing.

In the Supreme Court of the State of California, in Bank.

Grimes v. Hoschler, etc. et al. L.A. No. 30173.

Order Due October 4, 1974.

Filed: Sept. 19, 1974.

Appellants' petition for rehearing Denied.

McComb, J., Burke, J., and Clark, J., are of the opinion that the petition should be granted.

/s/ Wright
Chief Justice

## APPENDIX C.

### Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Three.

Ray Grimes, Plaintiff and Respondent, v. Leo B. Hoschler, The Registrar of Contractors of the California State Contractors License Board, et al., Defendants and Appellants. 2d Civ. No. 40680, Sup. Ct. No. C 19441.

Filed: May 23, 1973.

APPEAL from a Judgment of the Superior Court of Los Angeles County. Robert A. Wenke, Judge. Affirmed.

Evelle J. Younger, Attorney General, and Ronald F. Russo, Deputy Attorney General, for Defendants and Appellants.

Harrison W. Hertzberg and Joshua Kaplan for Plaintiff and Respondent.

Leo B. Hoschler, Registrar of Contractors for the Contractors' State License Board, and the Board appeal from a judgment in administrative mandamus directing them to set aside his order revoking the license of Ray Grimes as a general building contractor because Grimes had himself adjudicated a bankrupt.

The question posed is whether the State of California may revoke a contractor's license because of his avoidance or settlement of his contracting obligations for less than their full amount *by adjudication in bankruptcy* pursuant to Business and Professions Code section 7113.5 in view of section 7102 of the same code permitting the regaining of a revoked license only on a proper showing that all loss caused by the act for

which the license was revoked has been fully satisfied. The trial court held, on the authority of *Perez v. Campbell* (1971) 402 U.S. 637 [29 L.Ed.2d 233; 91 S.Ct. 1704], that the revocation of Grimes' license was unconstitutional under the supremacy clause of the United States Constitution (art. VI, cl. 2) as conflicting with the debtor discharge provisions of the Federal Bankruptcy Act (11 U.S.C. § 35) which would otherwise relieve a bankrupt contractor from his preexisting obligations.[1] We agree and affirm.

The Attorney General contends that *Perez* is not controlling as to the federal constitutionality of section 7113.5 and that the constitutionality of this section only may be considered in this proceeding since Grimes' license was revoked pursuant to it alone and any present consideration of any future problem of his in regaining his license in view of the requirements of section 7102 would be premature.

We do not believe that this is a correct statement of the basic issue on this appeal. What is before us is not primarily the federal constitutionality of these two

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[1]In article I, section 8, subdivision 4 of the United States Constitution, Congress is granted the power "To establish . . . *uniform* laws on the subject of bankruptcies throughout the United States." (Emphasis added.)

In *Perez*, a five to four decision, the United States Supreme Court criticized at length two of its prior decisions that had found no conflict between the Bankruptcy Act and motorist financial responsibility statutes of Utah and New York similar to the Arizona one then before it. These two decisions were *Kesler v. Department of Public Safety* (1962) 369 U.S. 153 [7 L.Ed. 2d 641; 82 S.Ct. 807] and *Reitz v. Mealey* (1941) 314 U.S. 33 [86 L.Ed. 21; 62 S.Ct. 24]. These decisions were relied upon by our Supreme Court and this court in previously holding section 7113.5 to be federally constitutional. (See *Tracy v. Contractors' State License Board*, 63 Cal.2d 598; *Hopkins v. Contractors' State License Bd.*, 240 Cal.App.2d 710; *Hope v. Contractors' etc. Bd.*, 228 Cal.App.2d 414.)

sections, but instead whether it is federally constitutional to revoke a contractor's license in this state pursuant to the one section in view of the requirements of the other with regard to regaining a revoked license.

In *Perez* the United States Supreme Court held that the portion of the Arizona Motor Vehicle Safety Responsibility Act, providing that a discharge in bankruptcy would be ineffective to relieve a bankrupt from his obligation to pay a preexisting judgment arising from an automobile accident tort as a condition precedent to his regaining his license and his automobile registration, conflicted with the discharge provisions of the Federal Bankruptcy Act. (See 402 U.S. 638, 641-643 [29 L.Ed.2d 236, 238-239].) The Court pointed out that acts of state legislatures which interfere with the laws of Congress or which constitute an obstacle to the accomplishment and execution of the full purposes and objectives of Congress are invalid under the supremacy clause of the United States Constitution. (*Id.* at 402 U.S. 649 [29 L.Ed.2d 242].) Obviously revoking a contractor's license for voluntarily going into bankruptcy and thereby exposing him to the subsequent withholding of such a license until he pays his debts otherwise discharged in bankruptcy conflicts with the discharge provisions of the Bankruptcy Act and nullifies the fresh start approach of that legislation.

In determining whether the revocation of a contractor's license pursuant to section 7113.5 because he has been adjudicated a bankrupt is federally unconstitutional, we must consider that a consequence of such revocation is to bring section 7102 into play against the contractor so unlicensed. Contrary to the position taken by this court some years ago in *Hope v. Contractors' etc. Bd.*, supra, 228 Cal.App.2d at pp. 425-

426, we do not believe it proper to view the federal constitutionality of the application of these two sections separate and apart from each other. Both statutes are a part of one statutory scheme regulating by licensing the contractors in this state. The statutes are obviously related in fact and in operation one is sequential to the other. Furthermore, we do not regard such consideration of section 7102 as premature. Multiplicity of suits is avoided by using this proceeding to determine the question as to the constitutionality of the application of section 7102 to a contractor whose license has been revoked because he has had himself adjudicated a bankrupt. In its nature administrative mandamus is an equitable proceeding and, therefore, equitable considerations should prevail. (See *Dare v. Bd. of Medical Examiners*, 21 Cal.2d 790, 795.)

The Attorney General in his closing brief has informed us that the Registrar of Contractors has not applied and does not intend to apply the provisions of section 7102 to cases in which licenses have been revoked pursuant to section 7113.5. This may be true, but the applicable portion of the statute itself (§ 7102, second par.) contains no such exception and the Registrar is constitutionally required to enforce the statute as written. He possesses no authority to write into it an exception which the Legislature has not made.

The judgment is affirmed.

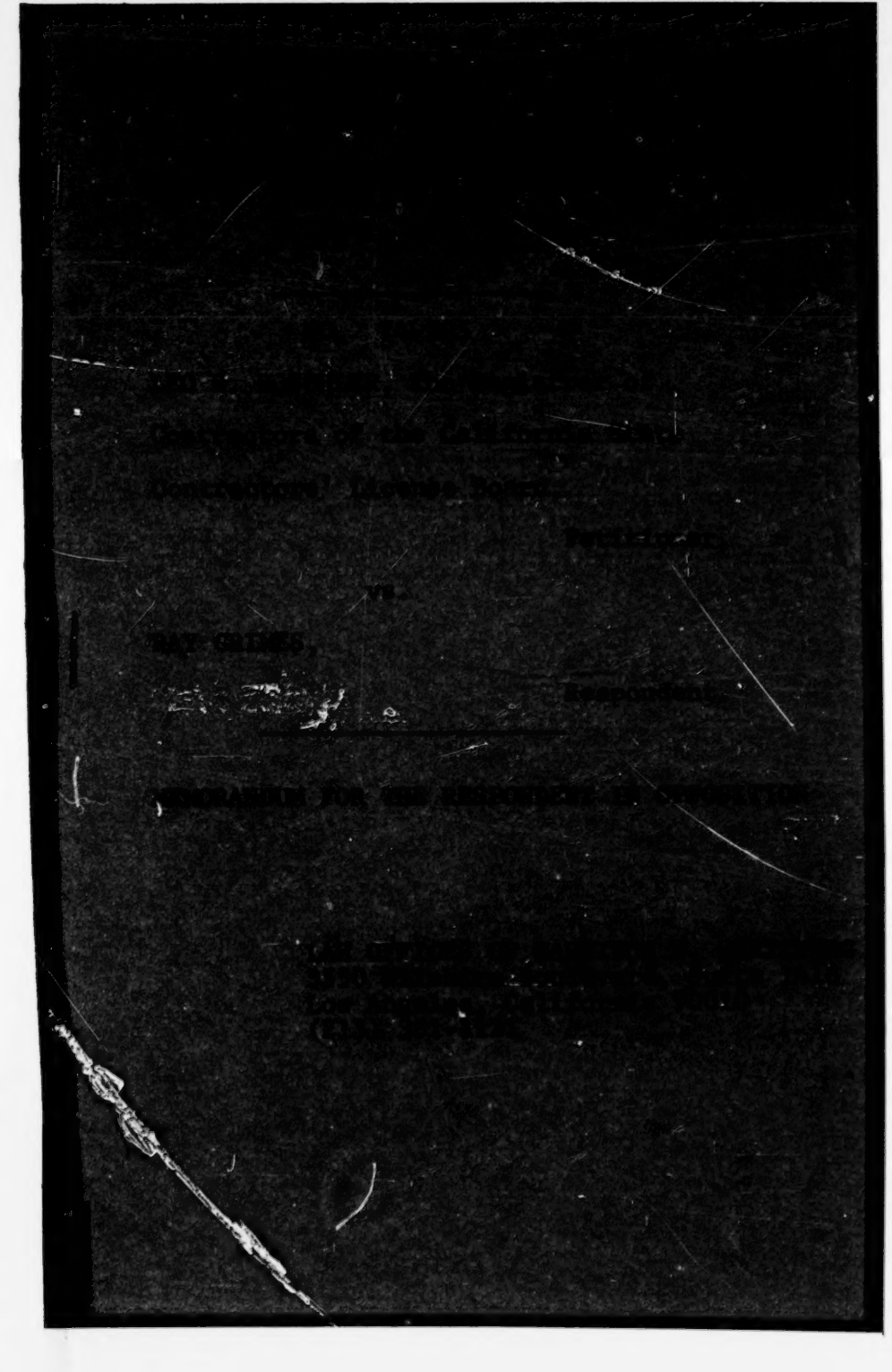
CERTIFIED FOR PUBLICATION

Cobey, *Acting P. J.*

We concur:

Schweitzer, *J.*

Allport, *J.*



IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

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NO. 74-705

LEO B. HOSCHLER, The Registrar of Contractors of the California State Contractors' License Board,

Petitioner,

vs.

RAY GRIMES,

Respondent.

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MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioner contends that the Supreme Court of California improperly relied on this Court's decision in Perez v. Campbell (1971) 402 U.S. 637.

Petitioner attempts to distinguish this case from the Perez principle in that a bankruptcy discharge does not automatically result in a disciplinary adjudication against a licensed contractor in the State of California, but merely permits a disciplinary proceeding to be filed against him.

However, both the statutes being challenged herein and their application to the facts herein speak otherwise. California Business and Professions Code Section 7113.5 provides as follows:

> "The avoidance or settlement by a licensee for less than the full amount of the lawful obligations of such licensee incurred as a contractor, whether by (a) adjudication in

bankruptcy .... constitutes a cause for disciplinary action."

California Business and Professions Code Section 7102 provides, in pertinent part:

"After revocation of a license upon any of the grounds set forth in this article, the license shall not be reinstated or reissued within a period of one year after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied ..."

In the instant proceeding, the accusation filed against respondent asserted "as a sole ground for discipline" a violation of Section 7113.5 in that by obtaining an

adjudication of bankruptcy, respondent avoided his lawful obligations incurred as a contractor. (See Supreme Court of California Opinion, petitioner's appendix page 1.)

Additionally, the Supreme Court of California found as a fact that the Registrar of Contractors, in his administrative hearing on the accusation, considered as evidence only that petitioner herein had been adjudicated a bankrupt and had discharged his debts incurred as a contractor for less than their full amount. The trial Court found this to be the sole cause for revocation of his license (Supreme Court of California Opinion, petitioner's appendix page 9).

1. Perez teaches us that the "effect" of state law is to be primarily considered in deciding whether a state statute is in conflict

with a federal statute and invalid under the Supremacy Clause of the Constitution. This Court, in Perez, overruled Kesler v. Department of Public Safety (1962) 369 U.S. 153, and Reitz v. Mealey (1941) 314 U.S. 343, wherein solely the "purpose" rather than the "effect" of state legislation was considered and such state legislation was upheld in that said "purpose" was not to circumvent the Bankruptcy Act. The Perez doctrine precludes state legislatures from nullifying unwanted federal legislation by establishing a "purpose" for the state legislation in furtherance of some state policy unrelated to the federal act. Regardless of the state policy or purpose, if the "effect" of the state law in fact frustrates a debtor's

avenue to the bankruptcy courts, that state statute cannot stand.

Perez lost his driver's license and vehicle registration for non-payment of a judgment resulting from an automobile accident. He was unable, under Arizona law, to reinstate his driver's license and auto registration even though he discharged the judgment in bankruptcy. Hence, the effect of the Arizona law was to bar the purpose of a "discharge in bankruptcy." Though the judgment creditor would have no recourse to collect his judgment, after bankruptcy discharge, in the Arizona courts, he had the state of Arizona standing by as his collector. That is to say, the "effect" of the Arizona law was, by a clever manipulation of words, a complete avoidance of the value of the Bankruptcy Act.

The State of California has accomplished the same result concerning contractors' licenses. Section 7113.5 of the California Business and Professions Code makes it "a cause for disciplinary action" for a licensed contractor to avoid the full amount of his lawful obligations, incurred as a contractor, by an adjudication in bankruptcy. Hence, in the instant proceeding, the statute of its face and as applied herein makes a bankruptcy discharge a cause for disciplinary action, without more. Secondly, Business and Professions Code Section 7102 makes it mandatory to repay the creditor as a condition to reissuance or reinstatement of the license.

A state contractor in California finds himself in no different position than an automobile driver in Arizona.

Neither can obtain a license until repayment of the debt, though both may have been adjudicated bankrupts. The "effect," then, is obviously no different. A citizen of Arizona would have been, prior to Perez, forced to pay the judgment creditor to obtain his driver's license and, thus, enable him to earn a living. A licensed contractor in California finds that the beneficial avenue of the Bankruptcy Act is unavailable to him for he must still repay the debts to continue his professional undertaking to earn a living.

2. Respondent contends that there is no federal question. If the State of California chooses to find that a state statutory scheme is in conflict with the United States Constitution, that is purely a question of state law. It is

only when the state extends its regulation into the area as to which the federal government has exclusive dominion and control that such state regulation is found to be in conflict therewith and struck down under the Supremacy Clause. However, where the state may give more protection to the supremacy of the federal laws than even the Constitution requires, we have no federal question. The United States Constitution and its authoritative decisions merely chart the course within which the state may regulate. Within that area, however, the state may regulate or not as it desires. For example, as in obscenity, see Miller v. California (1973) 413 U.S. 15, to the effect that a state is free to regulate so long as it does not transgress into the area of minimal Constitutional standards therein set

forth. The state may, if it desires, not regulate at all and leave its citizens free to see and read materials they choose. No different is the proscription of the Supremacy Clause of the United States Constitution. Here, the State of California chose to find that its state's statute was in conflict with that clause. It is not for this Court to instruct the State of California otherwise.

Respectfully submitted,

LAW OFFICES OF HARRISON W. HERTZBERG

By: /s/
HARRISON W. HERTZBERG

February 14, 1975.

AFFIDAVIT OF SERVICE BY MAIL

State of California )
County of Los Angeles ) ss.

Nancy Hess, first being duly sworn, says: That she is and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that her business address is 3550 Wilshire Blvd., Suite 1418, Los Angeles, California 90010, that on February 14, 1975, she served the within MEMORANDUM FOR THE RESPONDENT IN OPPOSITION on the Petitioner in said action or proceeding by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a mail-box, sub-post office, substation, or mail chute regularly maintained by the Government of the United States at Los Angeles, California, addressed to the attorney of record for said Petitioner at the address of said attorney as follows:

Honorable Evelle Younger, Attorney General
3580 Wilshire Boulevard, Suite 800
Los Angeles, California 90010

(Affiant's signature)

Subscribed and sworn to before me
February 14, 1975.

Notary Public in and for said
County and State.